

Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Implementation of Sections of the Cable
Television Consumer Protection and
Competition Act of 1992 -- Rate Regulation

MM Docket No. 92-266

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**CONTINENTAL CABLEVISION'S
PETITION FOR RECONSIDERATION**

Continental Cablevision, Inc. (Continental), pursuant to 47 C.F.R. §1.106, respectfully requests the Commission to reconsider its order of November 25, 1993, requiring cable operators to use the same rate methodology -- benchmarks or cost-of-service -- on all regulated tiers during the first year of regulation.¹ The new requirement is not necessary to achieve the order's stated purpose of avoiding "gaming" of the regulatory system by cable operators.² As Continental and others explained in comments on this question,³ the Commission can assure itself that cable

¹ In the Matter of Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992 -- Rate Regulation, *Third Report and Order*, MM Docket No. 92-266 (November 24, 1993), *modifying* 47 C.F.R. § 76.922(b) ("Election Order"). This order was published in the Federal Register on November 30, 1993.

² Election Order, *supra*; In the Matter of Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992 -- Rate Regulation, *First Order on Reconsideration, Second Report and Order, and Third Notice of Proposed Rulemaking*, MM Docket No. 92-266 (August 27, 1993) at ¶¶146-52.

³ See *Comments of Continental Cablevision, Inc., on the Third NPRM*, MM Docket No. 92-266 (September 30, 1993) ("*Continental's Comments*"); *Reply Comments of Continental Cablevision, Inc., on the Third NPRM*, MM Docket No. 92-266 (October 7, 1993) ("*Continental's Reply Comments*"); *Comments of Joint Parties on the Third Notice of Proposed Rulemaking*, MM Docket No. 92-266 (September 30, 1993) ("*Joint Parties' Comments*"); *Reply Comments of Joint Parties on Third Notice of Proposed Rulemaking*, MM Docket No. 92-266 (October 7, 1993) ("*Joint Parties' Reply Comments*").

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operators are not unfairly shifting costs away from benchmark-regulated tiers of service in two less costly and more efficient ways.

First, the Commission can directly prescribe the cost allocation methodology cable operators must use to assign costs to different service tiers.⁴ This would be analogous to the Commission's practice under Title II of retaining authority over the separations and cost allocation procedures used by common carriers, and would guarantee that no unfair cost shifting could occur.⁵ Second, the Commission could give cable operators flexibility in the cost allocation area, but could require them to present the results of cost allocations to all tiers in connection with a cost-of-service justification for any tier on a case-by-case basis. This would provide an effective means of preventing "gaming" every time a cost-of-service showing is actually filed.

Continental has already demonstrated that this latter approach is workable in practice. In each of the cost-of-service presentations Continental has made regarding Cable Programming Service (CPS) tiers filed with this Commission, Continental has included an exhibit showing that its cost allocation methodology does not under-allocate costs to the Basic Broadcast Tier (BBT).⁶ A uniform requirement that cable operators file this straightforward exhibit would fully address all of the concerns underlying the Commission's ruling, at a fraction of the cost to cable operators and regulators alike.

In these circumstances, the benefits of the Commission's new requirement are attenuated at best. The costs, however, are significant. Continental, along with a number of other cable

⁴ See *Continental's Comments; Continental's Reply Comments; Joint Parties' Comments*.

⁵ See 47 C.F.R. Part 36 (separations); 47 C.F.R. Part 64 (cost allocation).

⁶ Continental has filed cost-of-service justifications for its CPS tier rates in Billerica, Massachusetts; Broward County, Florida; Burlington, Massachusetts; Hoffman Estates, Illinois; Jacksonville, Florida; Lake St. Louis, Missouri; Los Angeles, California Area J; West Bloomfield, Michigan; and Wilmette, Illinois.

operators, responded to the imposition of rate regulation and the associated rate freeze by setting rates on one tier of service at benchmark levels (in Continental's case, the BBT tier) while setting rates on other tiers at levels that preserve the revenue-neutrality required by the freeze but that may or may not comply with benchmarks. This resulted in the need to file cost-of-service justifications for Continental's CPS rates for a handful of systems around the country.

Before the Commission's ruling, cost-of-service analyses of Continental's rates would generally be limited to reviews of CPS tier rates by this Commission, which has the regulatory experience needed to conduct such reviews fairly and efficiently.⁷ Now, Continental has no choice but to defend its benchmark-compliant BBT rates under cost-of-service principles in literally dozens of franchise areas around the country served by the systems with CPS rates that exceed benchmark levels. These elaborate cost-of-service filings would be totally unnecessary but for the Commission's ruling.

The burden of *producing* these needless filings falls on Continental and other cable operators, but the burden of *reviewing* them falls on the local franchising authorities. In earlier statements in this proceeding, the Commission made clear that it wanted to minimize the number of cost-of-service filings that would be made due to the administrative burdens such filings entail.⁸ Requiring the production and review of dozens of cost-of-service filings for rates that comply with benchmark regulation is an inexplicable and irrational departure from that earlier approach.

⁷ *Continental's Comments; Continental's Reply Comments; Joint Parties' Comments; Joint Parties' Reply Comments.*

⁸ *See, e.g.,* In the Matter of Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992, *Notice of Proposed Rulemaking*, MM Docket 93-215, FCC 93-353 (July 16, 1993) at ¶ 4; *see also id.* at ¶¶ 7, 12, 22.

In fact, the Commission's new ruling flies in the face of its repeated statements that its preferred, primary method of regulation is benchmarks, not cost-of-service.⁹ The theory behind benchmark regulation is that rates that are in line with those charged in competitive markets can be viewed as reasonable without an elaborate inquiry into the costs and earnings of the regulated firm. Benchmark regulation, therefore, will supposedly be more efficient than traditional Title II-type cost-of-service regulation. If the Commission actually believes its statements in this regard -- and any contrary view would be troubling indeed, in light of the more than one billion dollars of rate rollbacks predicated on the strength of the benchmark theory -- then a rate that complies with the applicable benchmark is *per se* a reasonable rate. This means that all of the time and expense spent justifying benchmark-compliant rates on a cost-of-service basis is *per se* wasted.

⁹ See, e.g., *id.* at ¶ 7.

For all the foregoing reasons, Continental requests that the Commission reconsider its ruling of November 25, 1993, and allow cable operators to rely on benchmark regulation for one or more tiers of service even if rates for other tiers are justified using cost-of-service principles.

Respectfully submitted,

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Dated: December 30, 1993

CERTIFICATE OF SERVICE

I, Brian Benison, hereby certify that I have this 30th day of December 1993, caused a copy of the foregoing to be delivered by first class mail, postage pre-paid to the parties on the attached list.


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